



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 12, 2003

MEMORANDUM TO: Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

FROM: Roy P. Zimmerman, Director */RA M. F. Weber for:/*
Office of Nuclear Security and
Incident Response

SUBJECT: USER NEED MEMORANDUM - REVISING PART 73 SAFEGUARDS
INFORMATION PROTECTION REQUIREMENTS

The Office of Nuclear Security and Incident Response (NSIR) requests assistance from the Office of Nuclear Material Safety and Safeguards (NMSS) to conduct a rulemaking to revise 10 CFR Part 73. Since the events of September 11, 2001, the U.S. Nuclear Regulatory Commission (NRC) has enhanced security at facilities throughout the nuclear industry primarily by issuing advisories and Orders. The Orders contain Safeguards Information (SGI), which is required to be protected pursuant to 10 CFR 73.21 and Section 147 of the Atomic Energy Act. Some of the Orders require licensees to protect certain information not previously protected as SGI per 73.21.

Although security Orders issued to certain byproduct material licensees were designated as SGI, the handling requirements have been modified from those in Part 73 based on overall consequences of a malevolent act. The Safeguards Information - Modified Handling (SGI-M) requirements were developed by the staff and approved by the Commission.

The purpose of the rulemaking is primarily to codify requirements imposed in the Orders. The regulations regarding SGI need to be revised to incorporate changes imposed by Orders and other changes dictated by security concerns subsequent to the events of September 11, 2001. Staff review of the SGI Program indicates that necessary changes affect types of information to be protected, handling and storage requirements, and access requirements. The proposed rulemaking is consistent with the strategic plan and performance goals of the agency and should be given a high priority based on the current terrorist threats facing our country and the nuclear industry.

NMSS previously communicated its intent to support this rulemaking in January 2003. Members of the information security staff have already met with Merri Horn, NMSS, to address issues related to the rulemaking.

Attachment: Proposed Changes to Part 73

CONTACT: Bern Stapleton, NSIR/DNS
(301) 415-2432

PROPOSED CHANGES TO PART 73

BACKGROUND:

The requirements for protection of Safeguards Information (SGI) are contained in 10 CFR 73.21. The regulation has remained essentially unchanged since 1981. Although the Atomic Energy Act of 1954, as amended, authorizes NRC to develop regulations for a broad range of nuclear licensees, NRC has previously only applied SGI to protection of nuclear power reactors and special nuclear material (SNM). The scope of Part 73 does not include source or byproduct material licensees or licensees that possess category III quantities of SNM. As a result, the current definition of SGI is not sufficiently broad to be consistent with the Act and with Commission decisions to protect a broader variety of information to protect public health and safety and common defense and security.

Since the events of September 11, 2001, the NRC has enhanced security at facilities throughout the nuclear industry primarily by issuing advisories and Orders. Some of the contents of the Orders were designated as SGI and are required to be protected accordingly.

Although security Orders issued to certain byproduct material licensees were designated as SGI, the handling requirements have been modified from those in Part 73 based on overall consequences of a malevolent act. The Safeguards Information - Modified Handling (SGI-M) requirements were developed by the staff and approved by the Commission.

The purpose of the rulemaking is primarily to codify requirements imposed in the Orders. The regulations regarding SGI in 10 CFR 73.21 need to be revised to incorporate changes imposed by Orders and upgraded to reflect the staff's experience with the regulation and safeguarding nuclear material and facilities. Staff review of the SGI Program indicates that changes are needed for access, types of information to be protected, and handling and storage requirements.

REGULATORY APPLICATION:

As a whole, the changes that have been identified for special nuclear material licensees and power reactor licensees are expected to slightly increase the amount of information being protected as SGI. For other nuclear material licensees possessing significant quantities of byproduct and source material (e.g., irradiators), the changes will cause them to protect physical security and other information useful to an adversary as SGI. Some of these licensees are required to protect the information according to NRC Orders. The increase in costs for these licensees is justified and necessary in the interest of common defense and security.

PROPOSED CHANGES TO NRC REGULATIONS:

73.1 Purpose and Scope will be revised to include other licensees possessing byproduct and source material. This change is consistent with the Atomic Energy Act of 1954, as amended.

73.2 Definitions will be changed to reflect the broader definition of SGI as stated in the Atomic Energy Act of 1954, as amended. This change will reflect recent security Orders.

ATTACHMENT

73.21(a) *General Performance Requirement* will be modified to change the types of licensees regulated by the rule to include byproduct and source material licensees and Category III SNM licensees. This change is consistent with the Atomic Energy Act of 1954, as amended, and the recent Orders.

73.21(b) *Information to be protected* will be modified to include new types of information to be designated as SGI. Information to be added will be based on Orders issued subsequent to 9/11 consistent with the definition of SGI in Section 147 of the AEA.

73.21(c) *Access to Safeguards Information* will be modified to better define individuals who are allowed access to SGI. These changes are a result of the staff's experience and changes based on need for access to information since the events of 9/11.

73.21(d) *Protection while in use or storage* will be modified to include new handling requirements for byproduct and source material licensees and other special nuclear material licensees not covered in the current regulation. The modified handling requirements (SGI-M) are currently imposed by Order. The requirements for SGI-M will be fully described in a separate section of the rule to avoid confusion with licensees who operate power reactors; possess formula quantities of special nuclear material; or transport or deliver for transport more than 100 grams of irradiated reactor fuel. The requirements will also be revised to protect SGI from illicit or accidental transmission via portable communication devices, such as pagers, cellular phones, personal digital assistants, and laptop computers.

73.21(e) *Preparation and marking of documents* will be modified to include the new designation of "Safeguards Information - Modified Handling" that has been imposed on some licensees through Order and to amplify standardized markings required on SGI documents.

73.21(f) *Reproduction and destruction of matter containing Safeguards Information* will be modified to include requirements for new types of copiers using digital technology. Such technology, if not properly controlled, could result in unauthorized dissemination or disclosure of SGI.

73.21(g) *External transmission of documents and material* will be modified to include new developments in encryption technology to provide adequate protection of SGI. Additionally, new requirements for transmission of documents and materials outside of the United States will be added.

73.21(h) *Use of automatic data processing (ADP) systems* will be modified to reflect developments in document protection and network interfacing to provide adequate protection of SGI.

TIMING OF CHANGE:

Consistent with the development of this rulemaking, my staff is conducting training for both NRC, State, and licensee personnel. A safeguards designation guide has been drafted and will aid individuals in determining in a more consistent manner what information is SGI. Also, a revision to NUREG-0794 is being developed for issuance to support implementation of the current regulation and recent Orders imposing compensatory measures. The revised NUREG will support this rulemaking. Anticipated time frame for completion of the final rule is eighteen months after approval of the rulemaking plan, if one is necessary, or twelve months after commencement of the rulemaking. The rulemaking should be given a high priority since it is

consistent with the agency's strategic plan and performance goals and addresses the current terrorist threats facing our country and the nuclear industry.

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